

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,
20 Massachusetts Avenue NW
Washington, DC 20529-2120

Defendant.

Case No. 19-cv-3421

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Citizenship and Immigration Services under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant the U.S. Citizenship and Immigration Services has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now

entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. Citizenship and Immigration Services (USCIS) is a component of a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USCIS has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

Cuccinelli Communications FOIA

7. On July 18, 2019, American Oversight submitted a FOIA request to USCIS seeking the following records:

- 1) All calendars or calendar entries for Kenneth T. Cuccinelli, including any calendars maintained on his behalf (e.g., by an administrative assistant or scheduler). American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

...

- 2) All email communications (including email messages, complete email chains, email attachments, and calendar invitations) sent by Acting USCIS Director Kenneth T. Cuccinelli to any email address ending in .com, .net, .org, .edu, or .mail.¹

...

- 3) All records reflecting communications (including emails, email attachments, phone logs, voicemail transcripts, text messages, messages on messaging platforms (such as WhatsApp or Signal), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) with or about Stephen Miller, including but not limited to communications containing the name “Stephen Miller” or email communications sent or forwarded to, received from, copying, or blind copying stephen.miller@who.eop.gov or s.miller@who.eop.gov.

American Oversight requests that you limit your search to Acting USCIS Director Kenneth T. Cuccinelli and any person communicating on his behalf, such as an assistant or scheduler.

8. American Oversight requested all responsive records from June 10, 2019, through the date the search is conducted.

9. By letter dated August 16, 2019, USCIS acknowledged receipt of American Oversight’s FOIA request and assigned the Cuccinelli Communications FOIA tracking number COW2019500962.

¹ In an effort to accommodate USCIS and reduce the number of responsive records to be processed and produced, American Oversight limited its request to emails sent by Acting Director Cuccinelli, along with the relevant complete email chains, displaying both the responsive sent messages and the prior received messages in each email chain.

10. By letter dated August 19, 2019, American Oversight requested expedited processing of the Cuccinelli Communications FOIA following several significant and controversial changes made to USCIS policies and operations by Acting Director Cuccinelli. *See* Exhibit A.

11. As of the time of this filing, American Oversight has received no further communication from USCIS regarding the Cuccinelli Communications FOIA.

Cuccinelli Ethics FOIA

12. On August 27, 2019, American Oversight submitted a FOIA request to USCIS seeking expedited processing of the following records:

- 1) Any conflicts or ethics waivers or authorizations for Kenneth T. Cuccinelli, including authorizations pursuant to 5 C.F.R. § 2635.502.
- 2) Records reflecting any recusal determination made or issued for Mr. Cuccinelli.
- 3) Copies of any SF-50 forms for Mr. Cuccinelli reflecting any change in position or title, including when he enters or leaves a position. We have no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.

13. American Oversight requested all responsive records from June 10, 2019, through the date the search is conducted.

14. A copy of the Cuccinelli Ethics FOIA and request for expedition is attached as Exhibit B.

15. As of the time of this filing, American Oversight has received no communication from USCIS regarding the Cuccinelli Ethics FOIA.

Decision Memoranda FOIA

16. On September 23, 2019, American Oversight submitted a FOIA request to USCIS seeking expedited processing of the following records:

All decision memoranda, directives, or policy interpretations or guidance signed, approved, or otherwise adopted by Acting Director Cuccinelli. This request includes any document establishing, modifying, clarifying, or rescinding any USCIS policy, legal or policy interpretation, or practice, whether presented as a memorandum, letter, guidance document, or in any other form.

17. American Oversight requested all responsive records from June 10, 2019, through the date the search is conducted.

18. A copy of the Decision Memoranda FOIA and request for expedition is attached as Exhibit C.

19. As of the time of this filing, American Oversight has received no communication from USCIS regarding the Decision Memoranda FOIA.

Political Leadership FOIA

20. On September 27, 2019, American Oversight submitted a FOIA request to USCIS seeking expedited processing of the following records:

- 1) Records sufficient to identify all employees who entered into a position at USCIS as “political appointees” since June 1, 2019, and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since June 1, 2019, identify each title or position). For purposes of this request, please consider any employee in a PAS position, a presidentially-appointed position, a non-career SES position, or a Schedule C position a “political appointee.” This request includes any individual who had been a political appointee prior to June 1, 2019, but changed positions following that time.
- 2) Records sufficient to identify all career employees who have been detailed into the Office of the Director since June 1, 2019; the title or position of each employee while on detail; and each employee’s originating agency or component, and prior title (to the extent that such individuals have held multiple titles or positions since June 1, 2019, identify each title or position).
- 3) For each individual identified in response to Parts 1 and 2 of this request:
 - a. The resume provided by the individual to the agency in connection with determining the appropriate salary for the

individual, or, if that is not available, a recent resume contained within the agency's records. We have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and professional association information is not exempt, and we object to any redactions of such information.

- b. Any conflicts or ethics waivers or authorizations issued for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
 - c. Records reflecting any recusal determination made or issued for the individual.
 - d. Copies of any SF-50 forms for the individual reflecting any change in position or title, including when the employee enters or leaves a position. We have no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.
- 4) Records sufficient to show any changes in USCIS leadership since June 1, 2019, including but not limited to any new or updated USCIS organizational charts.

21. A copy of the Political Leadership FOIA and request for expedition is attached as Exhibit D.

22. As of the time of this filing, American Oversight has received no communication from USCIS regarding the Political Leadership FOIA.

Cuccinelli Messages FOIA

23. On September 30, 2019, American Oversight submitted a FOIA request to USCIS seeking expedited processing of the following records:

All text messages sent by USCIS Acting Director Ken Cuccinelli on his official government phone or phones, or any other mobile device on which he conducts official business.

In an effort to accommodate your agency and reduce the number of potentially responsive records, American Oversight agrees that the search for responsive communications may be limited to messages sent by Acting

Director Cuccinelli. Despite this search accommodation, American Oversight still requests that complete message chains be produced, displaying both sent and received messages.

24. American Oversight requested all responsive records from June 10, 2019, through the date the search is conducted.

25. A copy of the Cuccinelli Messages FOIA and request for expedition is attached as Exhibit E.

26. As of the time of this filing, American Oversight has received no communication from USCIS regarding the Cuccinelli Messages FOIA.

Zadrozny Communications FOIA

27. On August 5, 2019, American Oversight submitted a FOIA request to USCIS seeking the following records:

- 1) All records reflecting communications (including emails, email attachments, phone logs, voicemail transcripts, text messages, messages on messaging platforms (such as WhatsApp or Signal), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of John Zadrozny, with or about Stephen Miller or Robert Gabriel, including but not limited to communications containing the name “Stephen Miller” or email communications sent or forwarded to, received from, copying, or blind copying stephen.miller@who.eop.gov, robert.gabriel@who.eop.gov, or any other email addresses used by Stephen Miller, Robert Gabriel, Jr., or anyone else in the White House serving as an assistant, advisor, or scheduler for Stephen Miller.

...

- 2) All email communications (including emails, email attachments, and calendar invitations) between (1) John Zadrozny and (2) Ken Cuccinelli, Andrew Veprek (veprekam@state.gov, and any other email addresses associated with Mr. Veprek), or Gene Hamilton (gene.hamilton@usdoj.gov, ghamilton@jmd.usdoj.gov, and any other email addresses associated with Mr. Hamilton).

28. American Oversight requested all responsive records from the date Mr. Zadrozny joined USCIS, through the date the search is conducted.

29. As of the time of this filing, American Oversight has received no communication from USCIS regarding the Zadrozny Communications Request.

Exhaustion of Administrative Remedies

30. Through USCIS's failure to respond to American Oversight's requests for expedited processing of the Cuccinelli Communications FOIA, Cuccinelli Ethics FOIA, Decision Memoranda FOIA, Political Leadership FOIA, and Cuccinelli Messages FOIA within the time period required by law, American Oversight has constructively exhausted its administrative remedies as to that issue and seeks immediate judicial review.

31. As of the date of this Complaint, USCIS has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records USCIS intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

32. Through USCIS's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing

33. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

34. American Oversight properly requested records within the possession, custody, and control of USCIS on an expedited basis.

35. USCIS is an agency subject to FOIA, and it must process FOIA requests on an expedited basis pursuant to the requirements of 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e).

36. The records sought by American Oversight contain information urgently needed in order to inform the public concerning actual or alleged government activity, and therefore justify expedited processing under 6 C.F.R. § 5.5(e).

37. USCIS failed to make a determination as to whether expedited processing was appropriate for the Cuccinelli Communications FOIA, Cuccinelli Ethics FOIA, Decision Memoranda FOIA, Political Leadership FOIA, or Cuccinelli Messages FOIA and to notify American Oversight of any such determination within ten days after the date of the request.

38. USCIS's failure to grant expedited processing under 6 C.F.R. § 5.5(e) violated FOIA and agency regulations.

39. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to grant expedited processing of each of its FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

40. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

41. American Oversight properly requested records within the possession, custody, and control of USCIS.

42. USCIS is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

43. USCIS has failed to promptly review agency records for the purpose of locating those records that are responsive to each of American Oversight's FOIA requests.

44. USCIS's failure to conduct adequate searches for responsive records to each of American Oversight's FOIA requests violates FOIA and USCIS regulations.

45. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT III
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

46. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

47. American Oversight properly requested records within the possession, custody, and control of USCIS.

48. USCIS is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

49. USCIS is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to American Oversight's FOIA requests.

50. USCIS is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

51. USCIS's failure to provide all non-exempt responsive records to American Oversight's FOIA requests violates FOIA and USCIS regulations.

52. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to each of American Oversight's FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to expedite the processing of the FOIA requests identified in this Complaint;
- (2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to each of American Oversight's FOIA requests;
- (3) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to each of American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 13, 2019

Respectfully submitted,

/s/ Hart W. Wood

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